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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-015

AN ORDER to create subchapter III of chapter ATPC 161, relating to grants to ethanol producers.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

02-13-01 RECEIVED BY LEGISLATIVE COUNCIL.

02-27-01 REPORT SENT TO AGENCY.

RS:AS;jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

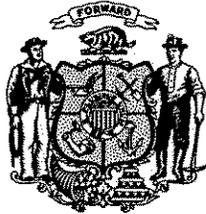
Comment Attached YES NO

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CLEARINGHOUSE RULE 01-015

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 93.75 (1) (a), Stats., provides that a person eligible to receive an ethanol grant includes a person who has produced 10 million gallons of ethanol within 12 months or, during the first 12 months that the person produces ethanol in the state, a lesser amount that is established by the department by rule. Section 93.75 (3), Stats., provides that the department's rules for the ethanol grant program must include the amount of ethanol that a person must produce within the first 12 months to be eligible for payments. It appears that Clearinghouse Rule 00-015 does not include specific provisions regarding the amount of ethanol that a person must produce within the first 12 months in order to be eligible for a grant.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. ATPC 161.31 (8) (a), "chapter" should be replaced with "ch."
- b. Section ATPC 161.33 refers to a form. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

**PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
- 2 proposes the following order to create subchapter III of chapter ATCP 161, relating to
- 3 grants to ethanol producers.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1) and 93.75(3), Stats.
Statutes interpreted: s. 93.75, Stats.

The legislature, in 1999 Wisconsin Act 55, created an ethanol grant program under s. 93.75, Stats. The legislature authorized the department of agriculture, trade and consumer protection (DATCP) to make grants to ethanol producers in this state. The legislature has not yet provided any funding for the grant program. This rule implements the grant program, subject to legislative funding. The ethanol grant program is scheduled to sunset on July 1, 2006.

Statutory Requirements

To be eligible for a grant under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period unless DATCP specifies a different amount by rule. The ethanol producer must also purchase commodity inputs from "local sources" as defined by DATCP rule.

Under s. 93.75, Stats., an ethanol producer is eligible for grant payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed DATCP to pay 20 cents per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. DATCP must adopt rules to prorate grant payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

Rule Contents

Annual Grants to Ethanol Producers

Under this rule, an ethanol producer may apply by April 1 of each year to receive an ethanol production grant for any consecutive 12-month period ending within a year prior to that April 1. (The applicant chooses the consecutive 12-month period.) Subject to available funding, DATCP will award to each eligible applicant a grant of 20 cents per gallon for up to 15 million gallons of "eligible ethanol" produced during the consecutive 12-month period identified in the grant application.

Eligible Producer

An ethanol producer is eligible for an annual grant if all the following apply:

- The producer produced at least 10 million gallons of "eligible ethanol" during the consecutive 12-month period identified in the grant application.
- DATCP has not previously awarded a grant to the ethanol producer for ethanol produced during the consecutive 12-month period identified in the grant application.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of consecutive 12-month period identified in the grant application.

Eligible Ethanol

Under this rule, DATCP will make grant payments only for "eligible ethanol" production. "Eligible ethanol" means ethanol that the ethanol producer produces in this state from commodities purchased from local sources. A "commodity" includes grain and other starch or sugar crops. A "commodity purchased from a local source" means any of the following:

- A commodity that the ethanol producer purchases from a person who grew that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

Grant Application

An ethanol producer must submit a grant application in writing, on a form provided by DATCP. The application must specify all the following:

- The consecutive 12-month period for which the applicant seeks a grant.

- The total gallons of “eligible ethanol” that the applicant produced during that consecutive 12-month period.
- The name and address of each supplier from whom the applicant purchased a commodity used to produce the “eligible ethanol.” The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant’s federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

DATCP Action on Grant Applications

DATCP must award grants by June 1 of each year, and must make grant payments by June 30 (the end of the state fiscal year). If DATCP denies a grant application, or awards a smaller prorated amount (see below), DATCP must explain its action in writing.

DATCP may require an applicant to provide additional information, and may deny a grant application if the applicant fails to honor DATCP’s reasonable request for relevant information. DATCP may exercise its authority under ch. 93, Stats., to verify a grant application, or to verify the applicant’s eligibility for a grant.

DATCP may deny a grant application, or recover grant payments made to an applicant, if DATCP finds that the applicant has materially misrepresented any information related to a grant application.

Prorating payments

Under this rule, if grant awards in any state fiscal year exceed the grant funds appropriated for that fiscal year, DATCP must prorate grant awards based on each applicant’s eligible ethanol production during the consecutive 12-month period identified in the applicant’s grant application. An ethanol producer who receives a pro-rated grant may *not* apply for the balance of that grant in the next fiscal year.

1 **SECTION 1.** Chapter ATCP 161, Subchapter III, is created to read:

1 (8) "Grain facility" means any building, bin or storage facility, used for
2 receiving, storing, conditioning, shipping or handling grain, whose operator is one of the
3 following:

4 (a) A warehouse keeper licensed under chapter 127, Stats., or 7 USC 241 to 271. (4)

5 (b) An exempt warehouse keeper, as defined in s. 127.01(14), Stats.

6 **ATCP 161.32 Grants to ethanol producers. (1) ANNUAL GRANT APPLICATION.**

7 An ethanol producer may apply to the department, by April 1 of each year, to receive an
8 ethanol production grant for any consecutive 12-month period ending not more than one
9 year prior to that April 1.

10 (2) GRANT AMOUNT. Except as provided in s. ATCP 161.36, the department shall
11 in each state fiscal year award to each eligible applicant under sub. (1) a grant of 20 cents
12 per gallon for up to 15 million gallons of eligible ethanol produced by the applicant
13 during the consecutive 12-month period identified in the producer's grant application.

14 The department shall make the grant award from the appropriation under s. 20.115(3)(d),
15 Stats., subject to the availability of funds in the appropriation.

16 (3) ELIGIBLE APPLICANTS. An ethanol producer is eligible for a grant under this
17 section if all the following apply:

18 (a) The ethanol producer produced at least 10 million gallons of eligible ethanol
19 during the consecutive 12-month period identified in the producer's application.

20 (b) The department has not previously awarded a grant to the ethanol producer
21 for ethanol produced during the consecutive 12-month period identified in the producer's
22 application.

1 (c) The ethanol producer began producing ethanol in this state not more than 60
2 months before the end of the consecutive 12-month period identified in the producer's
3 application.

4 **ATCP 161.33 Grant applications.** An ethanol producer applying for a grant
5 under s. ATCP 161.32 shall apply in writing, on a form provided by the department. The
6 application shall specify all the following:

- 7 (1) The consecutive 12-month period for which the applicant seeks a grant.
- 8 (2) The total gallons of eligible ethanol that the applicant produced during the
9 consecutive 12-month period under sub. (1).
- 10 (3) The name and address of each supplier from whom the applicant purchased a
11 commodity used to produce the eligible ethanol under sub. (2). The applicant shall
12 identify the type and amount of each commodity purchased from each supplier. If the
13 applicant purchased grain from a grain dealer, the applicant shall give the address of the
14 grain facility from which the grain dealer shipped that grain to the applicant.
- 15 (4) The applicant's federal tax identification number.
- 16 (5) The date on which the applicant first produced ethanol in this state.
- 17 (6) Any other information required by the department.

18 **ATCP 161.34 Department action on grant application.** (1) By June 1 of each
19 year, the department shall act on grant applications received by April 1 of that year.

20 **NOTE:** The department will wait until the April 1 grant application deadline to
21 determine the combined amount of grant applications from ethanol
22 producers. If eligible grant requests received by April 1 exceed the
23 amount of grant funds available in that fiscal year, the department must
24 prorate annual grant awards under s. ATCP 161.36.
25

1 (2) The department shall give each applicant written notice of its action under
2 sub. (1). If the department denies all or part of a grant application, or awards a prorated
3 grant amount under s. ATCP 161.36, the department shall explain its action in writing.

4 (3) The department may require an applicant to provide additional information
5 that is relevant to a grant application. The department may deny a grant application if the
6 applicant fails to honor the department's reasonable request for relevant information.

7 (4) The department may exercise its authority under ch. 93, Stats., to verify the
8 information contained in a grant application, or to verify the applicant's eligibility for a
9 grant.

10 (5) The department may deny a grant application, or recover grant payments
11 made to an applicant, if the department finds that the applicant has materially
12 misrepresented any information related to a grant application.

13 **ATCP 161.35 Grant payments.** By June 30 of each year, the department shall
14 pay the full amount of each grant awarded under s. ATCP 161.32(2) during the state
15 fiscal year ending that June 30.

16 **ATCP 161.36 Prorating grant awards.** If the sum of all grant awards under s.
17 ATCP 161.32(2) in any state fiscal year exceeds the total amount appropriated under s.
18 20.115(3)(d), Stats., for that fiscal year, the department shall prorate each applicant's
19 grant award based on the amount of eligible ethanol that each applicant produced during
20 the consecutive 12-month period identified in the applicant's grant application.

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STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

RULES RELATED TO GRANTS TO ETHANOL PRODUCERS

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed rule (proposed ATCP 161, subchapter III, Wis. Adm. Code) relating to annual grants to ethanol producers. The hearing will be held:

Monday, March 12, 2001 at 1:00 p.m.

Wisconsin Department of Agriculture, Trade and Consumer Protection
Board Room (SR-106)
2811 Agriculture Drive
Madison, WI 53718-6777.

The public is invited to attend the hearing and make comments on the proposed rule. Additional written comments will be accepted until March 12, 2001.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708 or by calling (608)224-4928. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this public hearing. Please make reservations for the hearing interpreter by March 7, 2001 either by writing to Kevin LeRoy, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708, (608/224-4928), or TDD at (608/224-5058). Handicap access is available at the hearing.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1) and 93.75(3), Stats.

Statutes interpreted: s. 93.75, Stats.

The legislature, in 1999 Wisconsin Act 55, created an ethanol grant program under s. 93.75, Stats. The legislature authorized the department of agriculture, trade and consumer protection (DATCP) to make grants to ethanol producers in this state. The

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legislature has not yet provided any funding for the grant program. This rule implements the grant program, subject to legislative funding. The ethanol grant program is scheduled to sunset on July 1, 2006.

Statutory Requirements

To be eligible for a grant under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period unless DATCP specifies a different amount by rule. The ethanol producer must also purchase commodity inputs from "local sources" as defined by DATCP rule.

Under s. 93.75, Stats., an ethanol producer is eligible for grant payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed DATCP to pay 20 cents per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. DATCP must adopt rules to prorate grant payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

Rule Contents

Annual Grants to Ethanol Producers

Under this rule, an ethanol producer may apply by April 1 of each year to receive an ethanol production grant for any consecutive 12-month period ending within a year prior to that April 1. (The applicant chooses the consecutive 12-month period.) Subject to available funding, DATCP will award to each eligible applicant a grant of 20 cents per gallon for up to 15 million gallons of "eligible ethanol" produced during the consecutive 12-month period identified in the grant application.

Eligible Producer

An ethanol producer is eligible for an annual grant if all the following apply:

- The producer produced at least 10 million gallons of "eligible ethanol" during the consecutive 12-month period identified in the grant application.
- DATCP has not previously awarded a grant to the ethanol producer for ethanol produced during the consecutive 12-month period identified in the grant application.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of consecutive 12-month period identified in the grant application.

Eligible Ethanol

Under this rule, DATCP will make grant payments only for "eligible ethanol" production. "Eligible ethanol" means ethanol that the ethanol producer produces in this state from commodities purchased from local sources. A "commodity" includes grain and other

starch or sugar crops. A "commodity purchased from a local source" means any of the following:

- A commodity that the ethanol producer purchases from a person who grew that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

Grant Application

An ethanol producer must submit a grant application in writing, on a form provided by DATCP. The application must specify all the following:

- The consecutive 12-month period for which the applicant seeks a grant.
- The total gallons of "eligible ethanol" that the applicant produced during that consecutive 12-month period.
- The name and address of each supplier from whom the applicant purchased a commodity used to produce the "eligible ethanol." The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant's federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

DATCP Action on Grant Applications

DATCP must award grants by June 1 of each year, and must make grant payments by June 30 (the end of the state fiscal year). If DATCP denies a grant application, or awards a smaller prorated amount (see below), DATCP must explain its action in writing.

DATCP may require an applicant to provide additional information, and may deny a grant application if the applicant fails to honor DATCP's reasonable request for relevant information. DATCP may exercise its authority under ch. 93, Stats., to verify a grant application, or to verify the applicant's eligibility for a grant.

DATCP may deny a grant application, or recover grant payments made to an applicant, if DATCP finds that the applicant has materially misrepresented any information related to a grant application.

Prorating payments

Under this rule, if grant awards in any state fiscal year exceed the grant funds appropriated for that fiscal year, DATCP must prorate grant awards based on each applicant's eligible ethanol production during the consecutive 12-month period identified in the applicant's grant application. An ethanol producer who receives a pro-rated grant may *not* apply for the balance of that grant in the next fiscal year.

FISCAL ESTIMATE

This proposed rule was initiated when the legislature passed 1999 Wis. Act 55. This act created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the program. Administrative costs associated with this program should be minimal and easily absorbed into the agency's general duties.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1999 Wis. Act 55 created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the grant program.

To be eligible for a payment, the ethanol producer must produce at least ten million gallons of ethanol per year. The legislation requires the department to pay ethanol producers who meet the statutory and proposed rule criteria 20¢ per gallon for not more than 15 million gallons.

Ethanol producers may only apply for a grant payment if they have been in business for sixty months or less. The entire program is scheduled to sunset on July 1, 2006.

There is little chance that any ethanol producer who can produce the minimum ten million gallons per year would also meet the state's definition of a "small business" contained in s. 227.114(1)(a), Stats. In that statutory section, "small business" means a business entity, including its affiliates, which is independently owned and operated and is not dominant in its field, and which employs fewer than twenty-five full time employees or which has gross annual sales of less than \$2,500,000. Consequently, the department expects this program to have minimal impact on small business in the ethanol production industry.

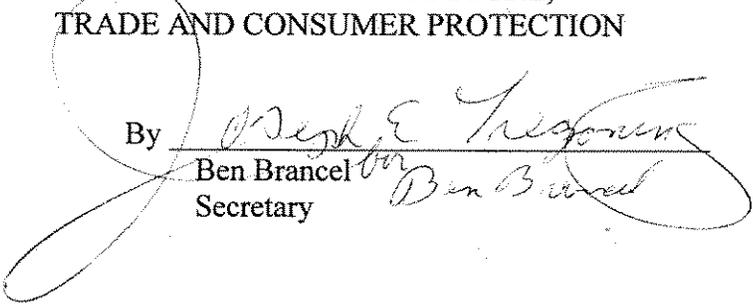
The grant program should have a major impact on the prices for agricultural crops used in the production of ethanol. By providing another market for these agricultural crops, the prices for those crops should increase. The increase in prices will benefit Wisconsin

farmers. Since the grant program is designed to promote the purchase of crops grown in Wisconsin, there will be a benefit to Wisconsin small businesses derived from this program and rule.

Dated this 15th day of February, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


Ben Brancel
Secretary

APR 20 2001

Clearing House Rule 01-015
DATCP Docket No. 00-R-10

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

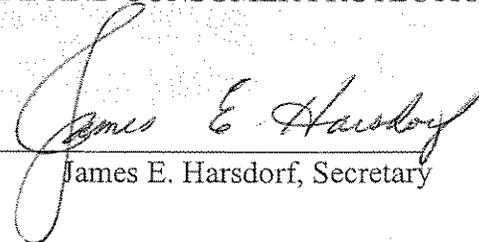
NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 01-015 to the presiding officer of each house of the legislature for standing committee review. The proposed rule creates Subchapter III of ATCP 161 relating to payments to ethanol producers.

Dated this 17 day of April, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


James E. Harsdorf, Secretary

COPY



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: April 16, 2001

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: James E. Harsdorf, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Payments to Ethanol Producers; Final Draft Rules**
(Clearinghouse Rule #01-015)

The Department of Agriculture, Trade and Consumer Protection hereby transmits the above rule for legislative committee review, pursuant to s. 227.19(2) and (3), Stats. We are enclosing three copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, pursuant to s. 227.19(2), Stats.

Statutory Requirements

1999 Wisconsin Act 55 created an ethanol payment program under s. 93.75, Stats. The Legislature directed the department to make payments to ethanol producers in this state, but did not provide any funding for the payment program. Governor McCallum has proposed funding of \$3 million per year in his 2001-03 budget proposal. This rule implements the payment program, subject to legislative funding. The ethanol payment program is scheduled to sunset on July 1, 2006.

To be eligible for a payment under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period. The department may specify a lesser first year amount by rule. The ethanol producer must also purchase commodity inputs from "local sources" as defined by department rule.

COPY

The Honorable Fred Risser
The Honorable Scott R. Jensen
April 16, 2001
Page 2

Under s. 93.75, Stats., an ethanol producer is eligible for payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed the department to pay 20¢ per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. The department must adopt rules to prorate payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

Rule Contents

Annual Payments to Ethanol Producers

Under this rule, an ethanol producer may apply by March 1 of each year to receive an ethanol production payment for any consecutive 12-month period ending within a year prior to that March 1. The applicant chooses the consecutive 12-month period. Subject to available funding, DATCP will award to each eligible applicant a payment of 20¢ per gallon for up to 15 million gallons of "eligible ethanol" produced during the production period identified in the application.

Qualified Producer

An ethanol producer may qualify for an annual payment if all the following apply:

- The producer produced at least 10 million gallons of "eligible ethanol" during the consecutive 12-month period identified in the producer's payment application. This minimum production requirement applies each year, including the first year.
- The department has not previously awarded a payment to the ethanol producer for ethanol produced during the 12-month production period.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of that 12-month production period.

Eligible Ethanol

Under this rule, the department will make payments only for "eligible ethanol" production. "Eligible ethanol" means ethanol that the ethanol producer produces in this state from commodities purchased from local sources. A "commodity" includes grain and other agricultural sources of starch or sugar. A "commodity purchased from a local source" means any of the following:

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- A commodity that the ethanol producer purchases from a person who produced that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

Payment Application

An ethanol producer must submit a payment application in writing. The application must specify all the following:

- The consecutive 12-month production period for which the applicant seeks a payment.
- The total gallons of "eligible ethanol" that the applicant produced during that consecutive 12-month period.
- The name and address of each supplier from whom the applicant purchased a commodity used to produce the "eligible ethanol." The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant's federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

DATCP Action on Payment Applications

The department must notify ethanol producers of their payment awards by May 1 of each year, and must make payments by June 30 (the end of the state fiscal year). If the department denies an application, or awards a smaller prorated amount (see below), the department must explain its action in writing.

The department may require an applicant to provide additional information, and may deny a payment application if the applicant fails to honor the department's reasonable request for relevant information. The department may use its investigative authority under ch. 93, Stats., to verify a payment application, or to verify the applicant's eligibility for a payment.

The Honorable Fred Risser
The Honorable Scott R. Jensen
April 16, 2001
Page 4

When verifying the amount of "eligible ethanol" produced from corn, the department may presume that a bushel of corn yields 2.5 gallons of ethanol unless the ethanol producer proves a different conversion rate.

The department may deny a payment application, or recover payments made to an applicant, if the department finds that the applicant has materially misrepresented any information related to a payment application. The department may not pay an ethanol producer who stops producing ethanol before the department makes the payment.

Prorating payments

If payment awards in any state fiscal year exceed the funds appropriated for that fiscal year, the department must prorate payment awards based on each applicant's eligible ethanol production during the consecutive 12-month period identified in the applicant's payment application (up to a maximum of 15 million gallons per producer). An ethanol producer who receives a pro-rated payment may *not* apply for the balance of that payment in the next fiscal year.

Record keeping

An ethanol producer who applies for payments must keep records of commodity purchases and ethanol sales. The producer must keep the records for at least three years, and must make them available to the department for inspection and copying upon request.

Hearings

The department held two public hearings on this rule, both in Madison. One was January 24, 2001 and the other was March 12, 2001. Several people registered and spoke in favor of the rule. There was no registered opposition. A hearing summary is attached.

Changes from Hearing Draft

The department made a number of minor changes in the final draft rule:

- The final draft expands the definition of "commodity" so that it is not limited to just "crops," but may include other agricultural sources of starch or sugar. This will give ethanol producers more flexibility to experiment with whey, cellulose byproducts and other types of feedstock.
- The final draft changes the annual application deadline from April 1 to March 1. Under s. 93.75(3m), Stats., the department must end the payment program if the Department of Transportation gives notice that the program has caused a reduction in federal highway grants to Wisconsin. With an earlier application deadline, the department can still make one more payment in the year that DOT provides such notice, if any.

- The final draft substitutes the term “payment” for the term “grant,” in order to be consistent with s. 93.75, stats.
- The final draft prohibits the department from making a payment to an ethanol producer who stops producing ethanol before the department makes the payment. This prevents the department from spending state money for a venture that has already failed.
- The final draft clarifies that, if it becomes necessary to prorate payments between ethanol producers, the department will prorate payments based on production (up to the 15 million gallon maximum specified in s. 93.75(2), Stats.). The department will not count a producer’s annual production in excess of 15 million gallons when it prorates payments.
- The final draft provides that, when the department verifies the amount of “eligible ethanol” produced from corn, the department may presume that a bushel of corn yields 2.5 gallons of ethanol unless the ethanol producer proves a different conversion rate. This will make it easier for the department to verify that the “commodities purchased from a local source” match the gallons of eligible ethanol claimed by the producer.
- The final draft no longer requires ethanol producers to apply for payment *on forms provided by the department*. The final rule draft allows applicants to submit their applications in other forms, provided that the applications include all required information.
- Under the final draft rule, an ethanol producer who applies for payment from the department must keep records related to commodity purchases and ethanol sales. The producer must keep the records for at least 3 years.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made 2 editorial comments on the hearing draft rule. The department modified the final draft rule to address these editorial comments.

The Rules Clearinghouse also commented that the rule “does not include a specific provision regarding the amount of ethanol that a person must produce within the first 12 months in order to be eligible for a grant,” as required by s. 93.75(3), Stats. The department disagrees. Proposed ATCP 161.32(4)(a) provides that, in order to qualify for payments, a producer must produce at least 10 million gallons the production period for which the producer seeks a grant. This requirement applies to any production period for which the producer is applying, including the first year of production.

The Honorable Fred Risser
The Honorable Scott R. Jensen
April 16, 2001
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Small Business Analysis

In order to qualify for a payment under s. 93.75, Stats., and this rule, an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period. Producers capable of producing this amount of ethanol are not "small businesses." However, the payment program and this rule will benefit Wisconsin farmers by promoting local grain purchases. A small business analysis ("final regulatory flexibility analysis") is attached.

Fiscal Estimate

The Legislature has not yet funded the payment program created under s. 93.75, Stats. Payments will require significant legislative funding. This rule merely spells out the procedures that DATCP will use to award payments to ethanol users. By itself, this rule will have no significant fiscal impact on the department. A fiscal estimate is attached.

**PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
- 2 proposes the following order to create subchapter III of chapter ATCP 161, relating to
- 3 payments to ethanol producers.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1) and 93.75(3), Stats.

Statutes interpreted: s. 93.75, Stats.

The legislature, in 1999 Wisconsin Act 55, created an ethanol payment program under s. 93.75, Stats. The legislature authorized the department of agriculture, trade and consumer protection (DATCP) to make payments to ethanol producers in this state. The legislature has not yet provided any funding for the payment program. This rule implements the payment program, subject to legislative funding. The ethanol payment program is scheduled to sunset on July 1, 2006.

Statutory Requirements

To be eligible for a payment under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period unless DATCP specifies a different amount by rule. The ethanol producer must also purchase commodity inputs from "local sources" as defined by DATCP rule.

Under s. 93.75, Stats., an ethanol producer is eligible for payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed DATCP to pay 20 cents per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. DATCP must adopt rules to prorate payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

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Rule Contents

Annual Payments to Ethanol Producers

Under this rule, an ethanol producer may apply by March 1 of each year to receive an ethanol production payment for any consecutive 12-month period ending within a year prior to that March 1. (The applicant chooses the consecutive 12-month period.) Subject to available funding, DATCP will award to each eligible applicant a payment of 20 cents per gallon for up to 15 million gallons of "eligible ethanol" produced during the "production period" identified in the application.

Eligible Producer

An ethanol producer is eligible for an annual payment if all the following apply:

- The producer produced at least 10 million gallons of "eligible ethanol" during the consecutive 12-month period identified in the application.
- DATCP has not previously awarded a payment to the ethanol producer for ethanol produced during the consecutive 12-month period identified in the application.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of consecutive 12-month period identified in the application.

Eligible Ethanol

Under this rule, DATCP will make payments only for "eligible ethanol" production. "Eligible ethanol" means ethanol that the ethanol producer produces in this state from commodities purchased from local sources. A "commodity" includes grain or another agricultural source of starch or sugar. A "commodity purchased from a local source" means any of the following:

- A commodity that the ethanol producer purchases from a person who produced that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

Payment Application

An ethanol producer must submit a payment application in writing. The application must specify all the following:

- The production period for which the applicant seeks a payment.
- The total gallons of "eligible ethanol" that the applicant produced during that consecutive 12-month period.

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- The name and address of each supplier from whom the applicant purchased a commodity used to produce the “eligible ethanol.” The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant’s federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

DATCP Action on Applications

DATCP must notify applicants of payment awards by May 1 of each year, and must make payment by June 30 (the end of the state fiscal year). If DATCP denies a payment application, or awards a smaller prorated amount (see below), DATCP must explain its action in writing.

DATCP may require an applicant to provide additional information, and may deny a payment application if the applicant fails to honor DATCP’s reasonable request for relevant information. DATCP may exercise its authority under ch. 93, Stats., to verify a payment application, or to verify the applicant’s eligibility for a payment.

In cases where an applicant is using corn as the commodity source of the ethanol, DATCP will presume the ethanol producer is able to produce 2.5 gallons of ethanol for every one bushel of corn purchased. The applicant may present evidence of a different conversion rate.

DATCP may deny a payment application, or recover payments made to an applicant, if DATCP finds that the applicant has materially misrepresented any information related to a payment application. DATCP may also refuse payment to an ethanol producer who stops producing ethanol before DATCP makes the payment.

Prorating payments

Under this rule, if all payment awards in any state fiscal year exceed the funds appropriated for that fiscal year, DATCP must prorate payment awards based on each applicant’s eligible ethanol production during the consecutive 12-month period identified in the applicant’s payment application. An ethanol producer who receives a pro-rated payment may *not* apply for the balance of that payment in the next fiscal year.

1 **Subchapter III**

2 **Payment to Ethanol Producers**

3 **ATCP 161.30 Purpose.** This subchapter establishes standards and procedures
4 for making payments to ethanol producers under s. 93.75, Stats.

5 **ATCP 161.31 Definitions.** In this subchapter:

6 (1) "Commodity" means grain, or another agricultural source of starch or sugar,
7 that can be fermented and distilled to produce ethanol.

8 (2) "Commodity purchased from a local source" means any of the following:

9 (a) A commodity that an ethanol producer purchases from a person who
10 produced that commodity in this state.

11 (b) Grain that an ethanol producer purchases from a grain dealer and receives
12 directly from a grain facility located in this state.

13 (3) "Department" means the state of Wisconsin department of agriculture, trade
14 and consumer protection.

15 (4) "Eligible ethanol" means ethanol that an ethanol producer produces in this
16 state from commodities purchased from local sources.

17 (5) "Ethanol producer" means a person who owns and operates an ethanol
18 production facility in this state.

19 (6) "Grain" means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum,
20 flaxseed, milo, sunflower seed and mixed grain as defined in the federal standards act, 7
21 USC 241 to 271.

22 (7) "Grain dealer" means a grain dealer as defined in s. 127.01(19), Stats.

1 (8) "Grain facility" means any building, bin or storage facility, used for
2 receiving, storing, conditioning, shipping or handling grain, whose operator is one of the
3 following:

4 (a) A warehouse keeper licensed under ch. 127, Stats., or 7 USC 241 to 271.

5 (b) An exempt warehouse keeper, as defined in s. 127.01(14), Stats.

6 (9) "Production period" means a consecutive 12 month period of ethanol
7 production designated by the ethanol producer.

8 **ATCP 161.32 Payments to ethanol producers.** (1) ANNUAL PAYMENT

9 APPLICATION. An ethanol producer may apply to the department, by March 1 of each
10 year, to receive an ethanol production payment for any production period ending not
11 more than one year prior to that March 1.

12 (2) PAYMENT AMOUNT. Except as provided in s. ATCP 161.36, the department
13 shall in each state fiscal year award to each eligible applicant under sub. (1) a payment of
14 20 cents per gallon for up to 15 million gallons of eligible ethanol produced by the
15 applicant during the production period identified in the producer's payment application.

16 (3) APPROPRIATION. The department shall make payment from the appropriation
17 under s. 20.115(3)(d), Stats., subject to the availability of funds in the appropriation.

18 (4) ELIGIBLE APPLICANTS. An ethanol producer is eligible for a payment under
19 this section if all the following apply:

20 (a) The ethanol producer produced at least 10 million gallons of eligible ethanol
21 during the production period identified in the producer's payment application.

1 (b) The department has not previously awarded a payment to the ethanol
2 producer for ethanol produced during the production period identified in the producer's
3 payment application.

4 (c) The ethanol producer began producing ethanol in this state not more than 60
5 months before the end of the production period identified in the producer's payment
6 application.

7 **ATCP 161.33 Payment applications.** An ethanol producer applying for a
8 payment under s. ATCP 161.32 shall apply in writing. The application shall specify all
9 the following:

10 (1) The production period for which the applicant seeks a payment.

11 (2) The total gallons of eligible ethanol that the applicant produced during the
12 production period under sub. (1).

13 (3) The name and address of each supplier from whom the applicant purchased a
14 commodity used to produce the eligible ethanol under sub. (2). The applicant shall
15 identify the type and amount of each commodity purchased from each supplier. If the
16 applicant purchased grain from a grain dealer, the applicant shall give the address of the
17 grain facility from which the grain dealer shipped that grain to the applicant.

18 (4) The applicant's federal tax identification number.

19 (5) The date on which the applicant first produced ethanol in this state.

20 (6) Any other information required by the department.

21 **ATCP 161.34 Department action on payment application.** (1) ACTION
22 DEADLINE. By May 1 of each year, the department shall act on applications received by
23 March 1 of that year.

1 **NOTE:** The department will wait until the March 1 application deadline to
2 determine the combined amount of all payment applications from ethanol
3 producers. If eligible payment requests received by March 1 exceed the
4 amount of payment funds available in that fiscal year, the department must
5 prorate annual payment awards under s. ATCP 161.36.
6

7 (2) NOTICE OF ACTION. The department shall give each applicant written notice
8 of its action under sub. (1). If the department denies all or part of a payment application,
9 or awards a prorated payment amount under s. ATCP 161.36, the department shall
10 explain its action in writing.

11 (3) ADDITIONAL INFORMATION. The department may require an applicant to
12 provide additional information that is relevant to a payment application. The department
13 may deny a payment application if the applicant fails to honor the department's
14 reasonable request for relevant information.

15 (4) VERIFYING INFORMATION. The department may exercise its authority under
16 ch. 93, Stats., to verify the information contained in a payment application, or to verify
17 the applicant's eligibility for a payment. When verifying the amount of eligible ethanol
18 produced from corn, the department may presume that a bushel of corn yields 2.5 gallons
19 of ethanol unless the producer proves a different conversion rate.

20 (6) MISREPRESENTATIONS. The department may deny a payment application, or
21 recover payments made to an applicant, if the department finds that the applicant has
22 materially misrepresented any information related to a payment application.

23 **ATCP 161.35 Payment deadline.** (1) GENERAL. Except as provided in sub. (2)
24 or s. ATCP 161.35, the department shall pay by June 30 of each year the full amount of
25 each payment awarded under s. ATCP 161.32(2) during the state fiscal year ending that
26 June 30.

1 (2) NO PAYMENT TO PRODUCER WHO HAS STOPPED PRODUCTION. The department
2 may not make any payment under sub. (1) to an applicant who stops producing ethanol
3 before the department makes the payment.

4 **ATCP 161.36 Prorating payment awards.** If the sum of all awards under s.
5 ATCP 161.32(2) in any state fiscal year exceeds the total amount appropriated under s.
6 20.115(3)(d), Stats., for that fiscal year, the department shall prorate each applicant's
7 payment award based on the amount of eligible ethanol that the applicant produced
8 during the production period identified in the applicant's payment application, up to a
9 maximum of 15 million gallons.

10 **NOTE:** See s. 93.75(2), Stats.

11

12 **ATCP 161.37 Records.** An ethanol producer who applies for payment under
13 this subchapter shall keep all the following records for at least 3 years after the
14 application date, and shall make the records available to the department for inspection
15 and copying upon request:

16 (1) All purchase records, contracts and receipts for commodities purchased from
17 a local source.

18 (2) Records relating to the sale of eligible ethanol.

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EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
James E. Harsdorf, Secretary

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
ATCP 161 Sub. Ch. III
Amendment No. (If Applicable)

Subject

Grant payments to ethanol producers

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues

Decrease Existing Appropriation Decrease Existing

Revenues

Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Source Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
s. 20.115(3)(d), Stats

Assumptions Used in Arriving at Fiscal Estimate

This proposed rule was initiated when the legislature passed 1999 Wis. Act 55. This act created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the program.

The legislation created a line in the state budget [s. 20.115(3)(d), Wis. Stats.] for this program. However, the legislature has not yet specified an amount.

Administrative costs associated with this program should be minimal and easily absorbed into the agency's general duties.

Long - Range Fiscal Implications

None

Agency/prepared by: (Name & Phone No.)

DATCP
Kevin LeRoy (608)224-4928

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp (608) 224-4746

Date

10/10/00

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Final Regulatory Flexibility Analysis

Payments to Ethanol Producers

ATCP 161, Wis. Adm. Code

1999 Wis. Act 55 created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the grant program.

To be eligible for a grant, the ethanol producer must produce at least ten million gallons of ethanol per year. The legislation requires the department to pay ethanol producers (who meet the requirements in the statute and proposed rule) 20¢ per gallon for not more than 15 million gallons.

Ethanol producers may only apply if they have been in business for sixty months or less. Furthermore, the entire program is scheduled to sunset on July 1, 2006.

There is little chance that any ethanol producer who can produce the minimum ten million gallons per year would also meet the state's definition of a "small business" contained in s. 227.114(1)(a), Stats. In that statutory section, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than twenty-five full time employees or which has gross annual sales of less than \$2,500,000. Consequently, the department expects this program to have minimal impact on small business in the ethanol production industry.

The grant program is expected to have a major positive impact on the prices of agricultural products used in the production of ethanol. By providing another market for these agricultural crops, the prices for those crops will likely increase and this increase in prices will benefit Wisconsin farmers. Since the grant program is designed to promote the purchase of crops grown in Wisconsin, there will be a benefit to Wisconsin small businesses derived from this program and rule.

Dated this 13th day of April, 2001

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

By William L. Oemichen

William L. Oemichen
Administrator,
Division of Trade and Consumer Protection

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